IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

RCRev..No. 95 of 2006(E)

(AGAINST THE JUDGMENT DATED 21/10/2005 MADE IN RCA.42/2002 ON THE FILE OF THE COURT OF THE RENT CONTROL APPELLATE AUTHORITY, PALAKKAD of II ADDL. DISTRICT COURT WHICH WAS AGAINST THE ORDER DATED 20/06/2000 MADE IN RCP.113/1997 ON THE FILE OF THE RENT CONTROL COURT OF PALAKKAD of PRL.MUNSIFF COURT, PALAKKAD)

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REVISION PETITIONER/APPELLANT/IST RESPONDENT:

M.M.MOIDOOTTY HAJI,
S/O.MUHAMMED UNNI, RESIDING AT OLAVAKKODE,
KAVILPAD AMSOM, PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS: RESPONDENTS:PETITIONERS AND 2ND RESPONDENT:
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1. ABDUL JELEEL HAJI, S/O.ABDU MUSALIAR,
RESIDING AT THEPARAMBIL, EDAVILANGU VILLAGE,
KODUNGALLUR TALUK.

2. ABDUL RAHIMAN, S/O.KATHER HAJI,
RESIDING AT CHALLINGATT, VEMBALLUR,
SREENARAYANAPURAM VILLAGE, KODUNGALLUR TALUK.

*** (3. SIDDIQ HAJI, NATIONAL BAKERY OWNER,**
RAILWAY STATION ROAD, OLAVAKKODE)- DELETED

(*THE NAME OF 3RD RESPONDENT DELETED FROM THE PARTY ARRAY AS PER ORDER DTD. 21/03/2007 IN I.A.3177/07)

BY ADV. SRI.T.H.ABDUL AZEEZ)
SRI.T.KRISHNAN UNNI) for R1 & R2

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY, A.K.BASHEER & K.P.BALACHANDRAN,JJ.

R.C.R. No. 95 of 2006 **C.R.**

Dated this the 18th day of July, 2007

ORDER

Koshy, J.

Whether section 11 (8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act') mandates that for the purpose of seeking eviction on the need for additional accommodation, need alleged ought to be for the purpose of extension of the same type of business that is carried on in the already occupied portion by the landlord is the question referred to this Full Bench for answer. A division bench of this court referred the above question doubting the ratio of the decision in **Purushothaman v. Radhakrishnan** (2004 (3) KLT 121). In the above case, it was held as follows:

> "S.11 (8) will come into play if the landlord wanted to expand his business for which he requires additional accommodation. In the instant case, what was pleaded in the Rent Control Petition is that landlord wanted additional accommodation for the purpose of electrical business, but, no evidence was adduced to establish that plea.

> Further, in the oral deposition landlord stated that he requires the premises for doing the business of lending tables and chairs, altogether a different purpose. .... Further, claim under S.11 (8) would lie only if the requirement is additional, that is supplemental to the existing user by the landlord. Landlord cannot seek eviction under S.11 (8) for a purpose which is alien to his existing state of affairs. Additional requirement must be supplementary, so as to augment his existing need. The nature of additional requirement should have some nexus with the existing need."

In the above decision, court relied on a decision of the Apex Court in **Kanniammal v. Chellaram** ((2002) 4 SCC 627). The Apex Court in that case was considering a case arising out of Tamil Nadu Buildings (Lease and Rent Control) Act and the relevant provisions, which came up for interpretation by the Apex Court in the said decision, was extracted in paragraph 5 of that judgment.

2. Section 10 (3) (c) of the Tamil Nadu Buildings (Lease and Rent Control) Act specifically provides as follows:

> "A landlord who is occupying only a part of a building, whether residential or

> non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be." (emphasis supplied).

Therefore, the observation of the Apex Court was with reference to section 10 (3) (c) of the Tamil Nadu Act as noticed above. It is differently worded from section 11 (8) of the Kerala Buildings (Lease and Rent Control) Act. Section 11 (8) of the Act reads as follows:

> "11. Eviction of tenants:-xx xx
>
> (8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use." (emphasis supplied).

It is seen that in Kerala Act, it does not use the words "same purpose" in contra distinction to the provisions contained in section 10 (3) (c) of the Tamil Nadu Act.

The words "for the same purpose" are absent in the Kerala Act. The Supreme Court interpreted the provisions of Kerala 11 (8) in **Davis v. Sebastian** (1999 (3) KLT 225-SC = ((1999) 6 SCC 604) and held as follows:

> "Now, what is the meaning of the expression 'personal use' in sub-s. (8)? It is a well settled principle of interpretation that words in a statute shall be given their natural, ordinary meaning; nothing should be added to them nor should any word be treated as otiose. Two comprehensive expressions 'additional accommodation' and 'personal use' are employed in sub-s.(8). The expression 'additional accommodation' takes in both residential as well as non-residential buildings. 'Personal use' is also an expression of wide amplitude. There is nothing in the sub-section which restricts the import of that expression. The said requirement of sub-s. (8) will be complied with on the satisfaction of the Controller about bona fide need of the additional accommodation for personal use of the landlord. To what use the additional accommodation should be put, is the choice of the landlord. In the case of a non-residential building whether a new business should be set up in the additional

> accommodation or whether it should be used for expansion of the existing business, is left entirely to the option of the landlord. This being the intendment of the legislature, the Court cannot impose any restriction with regard to the use of the additional accommodation from which the eviction of the tenant is sought."

Hon'ble Apex Court, after considering the provisions of Tamil Nadu Act and Andhra Pradesh Act, held as follows:

> "13. It may be pointed out here in contra distinction to the other enactments that under S.11 (8) of the Kerala Act claim for additional accommodation is not confined to expansion of the business which the landlord is carrying on. As pointed above, the landlord has a wider choice under S.11 (8) of the Act. He can use it at his option in case of non-residential accommodation, either for expansion of existing business or for a new business."

A Division Bench of this court followed the above decision in **Joseph v. Rent Controller** (2001 (2) KLT 538). In **S.R. Babu v. T.K.Vasudevan and others** (2001 (3) KLT 468 SC = (2001) 8 SCC 110), the Hon'ble Supreme Court held as follows:

> "In our view, once it is held that the

> landlord requires additional accommodation for his personal use, he is entitled to utilize it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant."

In view of the above authoritative pronouncements, it cannot be said that S.11 (8) is not attracted when the business proposed to be conducted in the additional accommodation sought to be gained is different from the business which the landlords at present carry on in a part of the building. Of course, test of bona fides and other conditions under section 11 (10) also shall be satisfied for ordering eviction under section 11 (8).

3. In **Indian Saree House v. Radhalakshmy** (2006 (3) KLT 129), it was observed as follows at paragraph 14:

> "The business that is proposed to be conducted in the portion of the building occupied by the tenants is not the same business which petitioners 4 and 5 now conduct in the portions of the building in their occupation. The case put forward by the landlords in the Rent Control Petition is this: "There is dearth of space for conducting these two stalls of the petitioners. Moreover the petitioners wish to expand their business by starting a fast

> food stall, for which the shop room in the possession of the respondents is highly necessary as additional accommodation and without which the idea of expanding the business will not be fructified". A question would arise whether the requirement for additional accommodation should be in respect of the same business as being carried on by the landlord in a part of the building or whether any business unconnected with such business could be carried on by the landlord in the building from which the tenant is sought to be evicted."

As early as in 1965, in **Antony Joseph v. Vareethu Francis** (1965 KLT 1113), this court interpreted section 11)(8) as follows:

> "7. All that the section requires is that the landlord must require 'additional accommodation for his personal use'. It is certainly for the landlord to decide what business he will carry on. I do not think that a Court will be justified in saying that he requires the building bona fide for his own use only if he requires it for expanding his existing trade."

The above view was upheld by the Apex Court in **Davis's case** (supra). A plethora of decisions from 1965 onwards would show that that was the consistent view taken by

this court as well as by the Apex Court regarding interpretation of section 11 (8) of the Kerala Act. In the above circumstances, we overrule the decision reported in **Purushothaman v. Radhakrishnan** (2004 (3) KLT 121) as the matter is covered by the Apex Court decision in **Davis v. Sebastian** (1999 (3) KLT 225 SC) and answer the reference in the negative against the tenant and in favour of the landlord.

4. As far as this case is concerned, eviction was sought under section 11 (2) (b), section 11 (4) (1) and section 11 (8) of the Act. The Rent Control Court ordered eviction under section 11 (2) (b) and section 11 (8) of the Act, but dismissed the application under section 11 (4) (i) of the Act. The tenant alone preferred an appeal. The appellate authority confirmed the order under section 11 (2) (b) and section 11 (8) of the Act, against which, the present revision is filed. Though the quantum of rent was in dispute in view of the concurrent finding by both the courts below, the issue is not seriously pressed into service and it was found, as a finding of fact, on the basis of evidence concurrently, that all the ingredients of section 11 (2) (b) and 11 (8) of the Act are satisfied and tenants are liable to be

evicted. However, since the tenant was occupying the premises for a long time and taking into account his plea for sometime for finding out an alternate provision, we grant time up to 31.12.2007 on the following conditions:

(1) That he shall deposit the entire arrears of rent as on 31.7.2007 in the execution court within three weeks from today;

(2) That he shall file an affidavit before the execution court within one month from today stating that all arrears of rent are paid and undertaking that he shall surrender vacant possession of the scheduled premises to the respondents/landlords positively on or before 31.12.2007 without creating any rights to third parties and he will continue to pay monthly rent on the due date itself till he actually surrenders vacant possession of the scheduled building to the respondents/landlords; and

(3) That in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till

31.12.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against him.

The R.C.R. is dismissed subject to the above directions.

J.B.KOSHY
JUDGE

A.K.BASHEER
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY,
A.K.BASHEER AND
K.P.BALACHANDRAN, JJ.

R.C.R.No.95/2006

ORDER

Dated:18th July, 2007